

(1) The Administrative Law Judge found claimant had satisfied the notice requirements of K.S.A. 44-520 by reporting his work-related injury to his immediate supervisor. The respondent appealed and argues the claimant failed to prove he gave notice of accident as required by K.S.A. 44-520.

Claimant alleges he injured his hands, arms, and right shoulder while performing his regular work activities for the respondent each and every day through January 21, 1997. Claimant was employed as a van driver and bellboy for the respondent. His job duties required him to drive hotel guests to and from the airport, load and unload luggage, vacuum carpet, clean windows, change the outdoor sign, and sweep the front portion of the parking lot. Claimant testified that in November 1996 his hands and right shoulder started bothering him as he was loading and unloading luggage and changing the outdoor sign. Claimant testified he notified his immediate supervisor, Ray Russell; Human Resources Director Wanda Shoemaker; and General Manager Patrick Kohn; that he was having problems with his hands and right shoulder while he was working.

Ray Russell, claimant's immediate supervisor, testified by deposition and acknowledged that claimant complained to him in October and November 1996 that he was having problems with his hands and right shoulder while lifting luggage and changing the outdoor sign. Mr. Russell testified he told claimant to advise Ms. Shoemaker, Human Resources Director, of the complaints, as she was the one responsible for authorizing medical treatment for a work-related injury. Mr. Russell testified that he did not know whether claimant, in fact, notified Ms. Shoemaker at that time of his problems. At the time of his deposition, Mr. Russell was no longer employed by the respondent. Respondent had eliminated his position and laid him off in November 1996.

Wanda Shoemaker and Patrick Kohn testified by deposition in this matter. Both denied that claimant had notified them at any time while he was employed that he had injured his hands or right shoulder while performing his regular work activities for the respondent. Both also testified that if claimant had testified he had notified them he had injured his hands or right shoulder at work while employed by the respondent then claimant was not telling the truth. Furthermore, Mr. Kohn testified he terminated claimant on January 21, 1997, for misconduct not associated with the claim for workers compensation.

Ms. Shoemaker testified she did not have any knowledge that claimant was making a claim for workers compensation benefits until sometime around March 1, 1997. Mr. Kohn testified he did not have knowledge that claimant was making a claim for workers compensation benefits until sometime around April 1, 1997.

The Administrative Law Judge found claimant had satisfied the notice requirement of K.S.A. 44-520 by notifying his immediate supervisor, Ray Russell, of both his hand problems and his right shoulder problem in October and November 1996. The Appeals Board finds that notice to a supervisor constitutes notice to the employer. See Odell v. Unified School District., 206 Kan. 752, 755, 481 P. 2d 974 (1971).

(2) Whether the Administrative Law Judge erred when she ordered the respondent to pay the medical expenses of Dr. Iris A. Brossard as authorized medical was an issue raised in the respondent's application for review but was not raised or argued in its brief before the Appeals Board.

Nevertheless, the Appeals Board has found on numerous other occasions that the Administrative Law Judge has the authority to grant or deny a request for medical compensation pursuant to K.S.A. 44-534a, as amended. Therefore, the Appeals Board does not have jurisdiction to review the issue of payment of medical expenses.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order, dated August 21, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS
Kurt W. Ratzlaff, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director